

AMENDED IN ASSEMBLY MAY 28, 2008

AMENDED IN ASSEMBLY MAY 23, 2008

AMENDED IN ASSEMBLY APRIL 1, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

**No. 1830**

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**Introduced by Assembly Member Lieu** *Members Lieu and Wolk*  
**(Principal coauthors: Assembly Members Galgiani, Nunez, and**  
**Ruskin)**

**(Coauthors: Assembly Members Arambula, Bass, Beall, Berg,**  
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**Karnette, Krekorian, Laird, Leno, Levine, Ma, Mendoza, Mullin,**  
**Nava, Price, Salas, Saldana, Solorio, Swanson, Torrico, and Wolk**  
**and Torrico)**

January 23, 2008

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An act to amend Sections 4970, ~~4973~~, 4974, 4975, 4977, 4978, 4978.6, and 4979 of, to amend the heading of Division 1.6 (commencing with Section 4970) of, and to add Sections 4973.2 and 4980 to, the Financial Code, relating to loans.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1830, as amended, Lieu. ~~High-cost, subprime, and nontraditional~~  
*Covered and subprime* loans.

Existing law imposes certain limitations and prohibitions on licensed persons, including real estate brokers, finance lenders, residential mortgage lenders, and financial institutions, with respect to consumer loans and covered loans. Existing law defines a “consumer loan” as a consumer credit transaction secured by residential real property, subject

to certain exceptions, and defines a “covered loan” as a consumer loan that meets certain other requirements. Existing law prohibits a covered loan from including a prepayment penalty after the first 36 months from the date of consummation of the loan but authorizes a covered loan to include a prepayment penalty before that time period if specified conditions are satisfied. Existing law prohibits a covered loan from being made unless a specified disclosure is provided to the consumer no later than 3 business days prior to signing of the loan documents. Violations of these limitations and prohibitions by licensed persons are deemed to be violations of the person’s licensing law and may be punishable by, among other things, disciplinary action, civil liability, and the imposition of administrative penalties and civil penalties up to \$25,000, as specified. For certain licensed persons, violations of these limitations and prohibitions may be punished as crimes.

This bill would ~~redefine a “covered loan” as a “high-cost loan,” would establish “subprime loans” and “nontraditional loans,” establish “subprime loans,”~~ as defined, as new categories of regulated loans, and would make various conforming changes to existing law relative to these loans. The bill would prohibit a ~~high-cost subprime~~ loan from including prepayment penalties and from including ~~at origination a payment schedule with regular periodic payments that, when aggregated, do not fully amortize the principal balance as of the maturity date of the loan a provision for negative amortization.~~ The bill would prohibit a person from making a ~~high-cost subprime~~ loan unless at the time the loan is consummated the person reasonably believes the consumer will be able to make the scheduled payments, including taxes and insurance, and would create a rebuttable presumption regarding repayment ability in certain circumstances. ~~The bill would prohibit a high-cost loan from being originated as a stated income loan, except as specified.~~ The bill would, *among other things*, prohibit a licensed person who originates ~~certain high-cost subprime~~ loans from receiving a yield spread premium or other incentive compensation, *in certain circumstances* and would prohibit a person from originating a ~~high-cost subprime~~ loan unless an escrow or impound account is established for a specified period of time. ~~The bill would delete the provisions requiring a disclosure to be provided to a consumer prior to making a covered loan and would instead prohibit a high-cost loan from being made unless a consumer receives a certificate of certain counseling.~~ The bill would establish similar limitations and prohibitions for subprime and nontraditional loans but would require a specified disclosure to be provided to a consumer before

~~those loans could be made.~~ The bill would authorize a licensing agency to levy administrative penalties in an amount up to \$10,000 against a person who violates the provisions regulating ~~high-cost, subprime, and nontraditional covered and subprime~~ loans and would make a person who makes a willful and knowing violation of those provisions of law liable to the consumer in the amount of \$25,000 or the consumer's actual damages, whichever is greater. The bill would authorize the Attorney General, city attorney, or district attorney to bring an action for specified civil penalties for a violation of the provisions regulating ~~high-cost, subprime, or nontraditional covered and subprime~~ loans. The bill would provide that it is a defense against foreclosure on a property secured by a ~~high-cost, subprime, or nontraditional covered or subprime~~ loan if the loan is in violation of the laws regulating those loans. The bill's provisions would apply to ~~high-cost, subprime, and nontraditional covered and subprime~~ loans originated on or after January 1, 2009. Because a violation of the bill's provisions by certain licensed persons may be punished as crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. The heading of Division 1.6 (commencing with  
2     Section 4970) of the Financial Code is amended to read:  
3  
4     DIVISION 1.6. SUBPRIME LENDING REFORM ACT  
5  
6     SEC. 2. Section 4970 of the Financial Code is amended to read:  
7     4970. For purposes of this division:  
8     (a) "Annual percentage rate" means the annual percentage rate  
9     for the loan calculated according to the provisions of the federal  
10    Truth in Lending Act and the regulations adopted thereunder by  
11    the Federal Reserve Board.

(b) ~~“High-cost~~ “*Covered* loan” means a consumer loan in which the original principal balance of the loan does not exceed the most current conforming loan limit for a single-family first mortgage loan established by the Federal National Mortgage Association in the case of a mortgage or deed of trust, and where one of the following conditions is met:

(1) For a mortgage or deed of trust, the annual percentage rate at consummation of the transaction will exceed by more than eight percentage points for first lien loans, or by more than 10 percentage points for subordinate lien loans, the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor.

(2) The total points and fees payable by the consumer at or before closing for a mortgage or deed of trust will exceed ~~5~~ 6 percent of the total loan amount.

(c) “Subprime loan” or “subprime mortgage” means a consumer loan in which the annual percentage rate exceeds the greater of either of the following:

(1) The difference between the annual percentage rate for the loan and the yield on Treasury securities having comparable periods of maturity is either equal to or greater than (A) 3 percentage points if the loan is secured by a first lien mortgage or deed of trust, or (B) 5 percentage points if the loan is secured by a subordinate lien mortgage or deed of trust. Without regard to whether the loan is subject to or reportable under the provisions of the federal Home Mortgage Disclosure Act (12 U.S.C. Sec. 2801, et seq.) (HMDA), the difference between the annual percentage rate and the yield on Treasury securities having comparable periods of maturity shall be determined using the same procedures and calculation methods applicable to loans that are subject to the reporting requirements of the HMDA.

(2) The difference between the annual percentage rate for the loan and the annual yield on conventional mortgages published by the Board of Governors of the Federal Reserve System, as published in statistical release H.15 or any publication that may supersede it, is either equal to or greater than (A) 1.75 percentage points, if the loan is secured by a first lien mortgage or deed of trust, or (B) 3.75 percentage points, if the loan is secured by a subordinate lien mortgage or deed of trust.

1 ~~(d) “Nontraditional loan” or “nontraditional mortgage” means~~  
2 ~~a consumer loan that allows borrowers to defer payment of~~  
3 ~~principal and, sometimes, interest, as set forth in the “Interagency~~  
4 ~~Guidance on Nontraditional Mortgage Product Risks” (71 Fed.~~  
5 ~~Reg. 58609 (Oct. 4, 2006)).~~

6 ~~(e)~~

7 (d) (1) “Points and fees” shall include the following:

8 (A) All items required to be disclosed as finance charges under  
9 Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal  
10 Regulations, including the Official Staff Commentary, as amended  
11 from time to time, except interest.

12 (B) All compensation paid directly or indirectly to a mortgage  
13 broker from any source, including, but not limited to, any payment  
14 of a yield spread premium, and including a payment to a mortgage  
15 broker that originates a loan in its own name in a table-funded  
16 transaction.

17 (C) All items listed in Section 226.4(c)(7) of Title 12 of the  
18 Code of Federal Regulations, only if the person originating the  
19 high-cost loan receives direct compensation in connection with  
20 the charge.

21 (2) “Points and fees” shall not include any of the following:

22 (A) Taxes, filing fees, recording fees, and other charges and  
23 fees paid or to be paid to public officials for determining the  
24 existence of or for perfecting, releasing, or satisfying a security  
25 interest.

26 (B) Bona fide and reasonable fees paid to a person other than  
27 the creditor or an affiliate of the creditor for fees for tax payment  
28 services, flood certification, or pest infestation and flood  
29 determination, appraisal fees, fees for inspections performed prior  
30 to closing, credit report fees, survey fees, attorneys’ fees if the  
31 borrower has the right to select the attorney from an approved list  
32 or otherwise, notary fees, escrow charges, title insurance premiums,  
33 and fire and hazard insurance and flood insurance premiums,  
34 provided that the conditions in Section 226.4(d)(2) of Title 12 of  
35 the Code of Federal Regulations are met.

36 ~~(f)~~

37 (e) “Consumer loan” means a consumer credit transaction that  
38 is secured by real property located in this state used, or intended  
39 to be used or occupied, as the principal dwelling of the consumer  
40 that is improved by a one-to-four residential unit. “Consumer loan”

1 does not include a reverse mortgage, an open line of credit as  
2 defined in Part 226 of Title 12 of the Code of Federal Regulations  
3 (Regulation Z), or a consumer credit transaction that is secured by  
4 rental property or second homes. “Consumer loan” does not include  
5 a bridge loan. For purposes of this division, a bridge loan is any  
6 temporary loan, having a maturity of one year or less, for the  
7 purpose of acquisition or construction of a dwelling intended to  
8 become the consumer’s principal dwelling.

9 ~~(g)~~

10 (f) “Original principal balance” means the total initial amount  
11 the consumer is obligated to repay on the loan.

12 ~~(h)~~

13 (g) “Licensing agency” shall mean the Department of Real  
14 Estate for licensed real estate brokers, the Department of  
15 Corporations for licensed residential mortgage lenders and licensed  
16 finance lenders and brokers, and the Department of Financial  
17 Institutions for commercial and industrial banks and savings  
18 associations and credit unions organized in this state.

19 ~~(i)~~

20 (h) “Licensed person” means a real estate broker licensed under  
21 the Real Estate Law (Part 1 (commencing with Section 10000) of  
22 Division 4 of the Business and Professions Code), a finance lender  
23 or broker licensed under the California Finance Lenders Law  
24 (Division 9 (commencing with Section 22000)), a residential  
25 mortgage lender licensed under the California Residential Mortgage  
26 Lending Act (Division 20 (commencing with Section 50000)), a  
27 commercial or industrial bank organized under the Banking Law  
28 (Division 1 (commencing with Section 99)), a savings association  
29 organized under the Savings Association Law (Division 2  
30 (commencing with Section 5000)), and a credit union organized  
31 under the California Credit Union Law (Division 5 (commencing  
32 with Section 14000)). Nothing in this division shall be construed  
33 to prevent any enforcement by a governmental entity against any  
34 person who originates a loan and who is exempt or excluded from  
35 licensure by all of the licensing agencies, based on a violation of  
36 any provision of this division. Nothing in this division shall be  
37 construed to prevent the Department of Real Estate from enforcing  
38 this division against a licensed salesperson employed by a licensed  
39 real estate broker as if that salesperson were a licensed person  
40 under this division. A licensed person includes any person engaged

1 in the practice of consumer lending, as defined in this division, for  
2 which a license is required under any other provision of law, but  
3 whose license is invalid, suspended or revoked, or where no license  
4 has been obtained.

5 (j)

6 (i) "Originate" means to arrange, negotiate, or make a consumer  
7 loan.

8 (k)

9 (j) "Servicer" has the same meaning provided in Section 6 (i)(2)  
10 of the Real Estate Settlement Procedures Act of 1974.

11 (l)

12 (k) "Fully indexed rate" means the index rate prevailing on a  
13 residential mortgage loan at the time the loan is consummated plus  
14 the margin that will apply after the expiration of any introductory  
15 interest rates.

16 SEC. 3. Section 4973 of the Financial Code is amended to read:

17 4973. The following are prohibited acts and limitations for  
18 high-cost loans:

19 (a) A high-cost loan shall not include a prepayment fee or  
20 penalty.

21 (b) (1) A high-cost loan may not provide at origination for a  
22 payment schedule with regular periodic payments that when  
23 aggregated do not fully amortize the principal balance as of the  
24 maturity date of the loan.

25 (2) For a payment schedule that is adjusted to account for the  
26 seasonal or irregular income of the consumer, the total installments  
27 in any year shall not exceed the amount of one year's worth of  
28 payments on the loan. This prohibition does not apply to a bridge  
29 loan. For purposes of this paragraph, "bridge loan" means a loan  
30 with a maturity of less than 18 months that only requires payments  
31 of interest until the time when the entire unpaid balance is due and  
32 payable.

33 (c) A high-cost loan shall not contain a provision for negative  
34 amortization such that the payment schedule for regular monthly  
35 payments causes the principal balance to increase.

36 (d) A high-cost loan shall not include terms under which periodic  
37 payments required under the loan are consolidated and paid in  
38 advance from the loan proceeds.

39 (e) A high-cost loan shall not contain a provision that increases  
40 the interest rate as a result of a default. This provision does not

1 apply to interest rate changes in a variable rate loan otherwise  
2 consistent with the provisions of the loan documents, provided the  
3 change in the interest rate is not triggered by the event of default  
4 or the acceleration for the indebtedness.

5 (f) (1) A person who originates high-cost loans shall not make  
6 or arrange a high-cost loan unless at the time the loan is  
7 consummated, the person reasonably believes the consumer, or  
8 consumers, when considered collectively in the case of multiple  
9 consumers, will be able to make the scheduled payments, including  
10 taxes and insurance at the fully indexed rate, to repay the obligation  
11 based upon a consideration of their current and expected income,  
12 current obligations, employment status, and other financial  
13 resources, other than the consumer's equity in the dwelling that  
14 secures repayment of the loan. In the case of a high-cost loan that  
15 is structured to increase to a specific designated rate, stated as a  
16 number or formula, at a specific predetermined date not exceeding  
17 37 months from the date of application, this evaluation shall be  
18 based upon the fully indexed rate of the loan calculated at the  
19 consummation of the transaction.

20 There is a rebuttable presumption that a high-cost mortgage was  
21 made without regard to repayment ability if, at the time the loan  
22 is consummated, the consumer's total monthly debts, including  
23 total monthly housing payments, taxes, property and private  
24 mortgage insurance, any required homeowner or condominium  
25 fees, and any subordinate mortgages, including those that will be  
26 made contemporaneously to the same consumer, exceed 45 percent  
27 of the consumer's established monthly gross income. To rebut the  
28 presumption of inability to repay, the licensed person shall, at  
29 minimum, determine and consider the consumer's residual income  
30 after payment of current expenses and proposed loan payments.  
31 However, no presumption of ability to make the scheduled  
32 payments to repay the obligation shall arise solely from the fact  
33 that at the time the loan is consummated, the consumer's total  
34 monthly debts, including amounts owed under the loan, do not  
35 exceed 45 percent of a consumer's established monthly gross  
36 income.

37 (2) In the case of a stated income loan, the reasonable belief  
38 requirement in paragraph (1) shall apply, however, for stated  
39 income loans that belief may be based on the income verified by  
40 using tax records, bank statements, payroll receipts, or other



1 reasonable documentation from a third party. A person shall not  
2 knowingly or willfully originate a high-cost loan as a stated income  
3 loan with the intent, or effect, of evading the provisions of this  
4 subdivision. A high-cost loan shall not be originated as a stated  
5 income loan based solely on a consumer's statement of income.

6 ~~(g) A person who originates a high-cost loan shall not pay a~~  
7 ~~contractor under a home improvement contract from the proceeds~~  
8 ~~of a high-cost loan other than by an instrument payable to the~~  
9 ~~consumer or jointly to the consumer and the contractor or, at the~~  
10 ~~election of the consumer, to a third-party escrow agent for the~~  
11 ~~benefit of the contractor in accordance with terms and conditions~~  
12 ~~established in a written escrow agreement signed by the consumer,~~  
13 ~~the person who originates a high-cost loan, and the contractor prior~~  
14 ~~to the disbursement of funds. No payments, other than progress~~  
15 ~~payments for home improvement work that the consumer certifies~~  
16 ~~is completed, shall be made to an escrow account or jointly to the~~  
17 ~~consumer and the contractor unless the person who originates the~~  
18 ~~loan is presented with a signed and dated completion certificate~~  
19 ~~by the consumer showing that the home improvement contract~~  
20 ~~was completed to the satisfaction of the consumer.~~

21 ~~(h) It is unlawful for a person who originates a high-cost loan~~  
22 ~~to recommend or encourage a consumer to default on an existing~~  
23 ~~consumer loan or other debt in connection with the solicitation or~~  
24 ~~making of a high-cost loan that refinances all or any portion of the~~  
25 ~~existing consumer loan or debt.~~

26 ~~(i) A high-cost loan shall not contain a call provision that permits~~  
27 ~~the lender, in its sole discretion, to accelerate the indebtedness.~~  
28 ~~This prohibition does not apply if repayment of the loan has been~~  
29 ~~accelerated in accordance with the terms of the loan documents~~  
30 ~~(1) as a result of the consumer's default, (2) pursuant to a~~  
31 ~~due-on-sale provision, or (3) due to fraud or material~~  
32 ~~misrepresentation by a consumer in connection with the loan or~~  
33 ~~the value of the security for the loan.~~

34 ~~(j) A person who originates a high-cost loan shall not refinance~~  
35 ~~or arrange for the refinancing of a consumer loan such that the~~  
36 ~~new loan is a high-cost loan that is made for the purpose of~~  
37 ~~refinancing, debt consolidation or cash out, that does not result in~~  
38 ~~a net tangible benefit to the consumer, considering the consumer's~~  
39 ~~stated purpose for seeking the loan, fees, interest rates, finance~~  
40 ~~charges, and points.~~

~~(k) A licensed person shall not receive, directly or indirectly, any incentive compensation, including a yield spread premium, for originating a high-cost loan with an interest rate above the wholesale par rate for which the consumer qualifies.~~

~~(l) A licensed person shall not originate a high-cost loan unless the loan contract requires the creation of an escrow account and the collection of the monthly escrow of property taxes and hazard insurance calculated in accordance with the requirements of Section 2609 of Title 12 of the United States Code and regulations promulgated pursuant thereto. The provisions of this paragraph do not apply to a high-cost loan that is secured by a subordinate lien when the taxes and insurance are escrowed through another loan.~~

~~(m) A licensed person shall not originate a high-cost loan unless an escrow or impound account is established that remains in existence for a minimum period of five years or until the consumer has sufficient equity in the dwelling securing the loan that private mortgage insurance is not required.~~

~~(n) A licensed person shall not originate a high-cost loan unless the consumer provides certification from a housing counselor approved by the United States Department of Housing and Urban Development that the consumer received counseling on the advisability of the loan transaction.~~

~~(o) (1) In connection with a high-cost loan, a licensed person shall not steer, counsel, or direct a consumer to a loan with rates, charges, principal amount, or prepayment terms that are more costly than that for which the consumer qualifies.~~

~~(2) If a broker originates a high-cost loan, the broker shall not steer, counsel, or direct any prospective consumer to accept a loan product at a higher cost than that for which the consumer could qualify based on the loan products offered by the persons with whom the broker regularly does business.~~

~~(p) A person who originates a high-cost loan shall not avoid, or attempt to avoid, the application of this division by dividing any loan transaction into separate parts or otherwise structuring a loan transaction for the purposes of evading the provisions of this division or by engaging in any other subterfuge with the intent of evading the provisions of this division.~~

1 ~~(q) A person who originates a high-cost loan shall not act in~~  
2 ~~any manner, whether specifically prohibited by this section or of~~  
3 ~~a different character, that constitutes fraud.~~

4 ~~SEC. 4.~~

5 *SEC. 3.* Section 4973.2 is added to the Financial Code, to read:

6 4973.2. The following are prohibited acts and limitations for  
7 subprime and nontraditional loans:

8 (a) A licensed person shall not originate a subprime or  
9 nontraditional loan unless at the time the loan is consummated,  
10 the licensed person reasonably believes the borrower, or borrowers,  
11 when considered collectively in the case of multiple borrowers,  
12 will be able to make the scheduled loan payments, real estate tax  
13 payments, and insurance payments associated with the loan.

14 (b) (1) A licensed person shall base its determination of the  
15 borrower's ability to pay on documentation of all sources of income  
16 verified by tax returns, payroll receipts, bank records, or the best  
17 and most appropriate form of documentation available, and the  
18 debt-to-income ratio, the borrower's residual income after payment  
19 of current expenses, and the proposed loan payments.

20 (2) A statement provided by the borrower of the income and  
21 financial resources of the borrower, without other documentation  
22 referred to in this subdivision, is not sufficient verification for  
23 purposes of assessing the ability of the borrower to pay.

24 (3) The calculation assumptions used in evaluating the ability  
25 to repay a subprime or nontraditional loan shall include the  
26 following:

27 (A) The monthly payment amounts based on, at a minimum,  
28 the fully indexed rate, assuming a fully amortizing repayment  
29 schedule, as well as amounts for taxes and insurance.

30 (B) Verification of all sources of income, as provided in  
31 paragraph (1).

32 (4) With regard to subprime and nontraditional loans, there is  
33 a rebuttable presumption that a mortgage was made without regard  
34 to repayment ability if, at the time the loan is consummated, the  
35 borrower's total monthly debts, including total monthly housing  
36 payments, taxes, property and private mortgage insurance, any  
37 required homeowner or condominium fees, and any subordinate  
38 mortgages including those that will be made contemporaneously  
39 to the same borrower, exceed 55 percent of the borrower's  
40 established monthly gross income. To rebut the presumption of

1 inability to repay, the licensed person shall, at minimum, determine  
2 and consider the borrower's residual income after payment of  
3 current expenses and proposed loan payments. However, no  
4 presumption of ability to make the scheduled payments to repay  
5 the obligation shall arise solely from the fact that, at the time the  
6 loan is consummated, the borrower's total monthly debts, including  
7 amounts owed under the loan, do not exceed 55 percent of the  
8 borrower's established monthly gross income.

9 (c) (1) A subprime loan shall not include a prepayment fee or  
10 penalty.

11 (2) For a consumer loan that is not a subprime loan and that has  
12 an adjustable interest rate, a creditor shall not charge a prepayment  
13 fee or penalty within six months of the date of the first interest rate  
14 adjustment for the loan.

15 (d) (1) A person originating a ~~subprime or nontraditional~~ loan  
16 shall not refinance or arrange for the refinancing of a consumer  
17 loan into a new loan for the purpose of refinancing, debt  
18 consolidation or cash out, that does not result in a reasonable net  
19 tangible benefit to the borrower, considering all of the  
20 circumstances, including, but not limited to, the terms of both the  
21 new and refinanced loans, the cost of the new loan including, fees,  
22 interest rates, finance charges, and points, and the borrower's  
23 individual circumstances.

24 (2) For a period of one year after the consummation of a  
25 ~~subprime or nontraditional~~ loan originated by a licensed person to  
26 a borrower, neither the licensed person who made the loan, nor  
27 any licensed person who holds the loan, or an affiliate of either,  
28 shall refinance the existing ~~subprime or nontraditional~~ loan unless  
29 the new loan is no cost for the borrower or borrowers and includes  
30 a lower rate. This paragraph shall not restrict a licensed person  
31 from responding to specific borrower inquiries regarding  
32 refinancing.

33 (e) In connection with a ~~subprime or nontraditional~~ loan, a  
34 licensed person shall not steer, counsel, or direct a borrower to a  
35 loan with rates, charges, principal amount, or prepayment terms  
36 that are more costly than that for which the borrower qualifies.

37 (f) (1) A licensed person shall not receive, directly or indirectly,  
38 any incentive compensation, including a yield spread premium,  
39 for originating a ~~subprime or nontraditional~~ loan with an interest  
40 rate above the wholesale par rate for which the borrower qualifies.

1 (2) Notwithstanding paragraph (1), in a consumer loan other  
2 than a subprime-~~or nontraditional~~ loan, a licensed person may  
3 receive compensation in the form of an increased rate not to exceed  
4 200 basis points above the par rate for which the borrower qualifies  
5 if:

6 (A) The licensed person receives no other compensation,  
7 however denominated, directly or indirectly, from the borrower  
8 or from another licensed person.

9 (B) The loan does not include discount points, origination points,  
10 or rate reduction points, however denominated, or any payment  
11 reduction fee, however denominated, or any other fees or charges  
12 except bona fide and reasonable charges itemized in Section  
13 226.4(c)(7) of Title 12 of the Code of Federal Regulations,  
14 provided they are payable to a third party unaffiliated with the  
15 licensed person.

16 (C) The loan does not include a prepayment penalty.

17 (g) A subprime-~~or nontraditional~~ loan shall not contain a  
18 provision that increases the interest rate as a result of a default.  
19 This provision does not apply to interest rate changes in a variable  
20 rate loan otherwise consistent with the provisions of the loan  
21 documents, provided the change in the interest rate is not triggered  
22 by an event of default or the acceleration of the indebtedness.

23 (h) A subprime-~~or nontraditional~~ loan shall not contain a call  
24 provision that permits the lender, in its sole discretion, to accelerate  
25 the indebtedness. This prohibition does not apply if repayment of  
26 the loan has been accelerated in accordance with the terms of the  
27 loan documents (1) as a result of the borrower's default, (2)  
28 pursuant to a due-on-sale provision, or (3) due to fraud or material  
29 misrepresentation by a borrower in connection with the loan or  
30 the value of the security for the loan.

31 (i) It is unlawful for a person who originates a subprime-~~or~~  
32 ~~nontraditional~~ loan to recommend or encourage a borrower to  
33 default on an existing consumer loan or other debt in connection  
34 with the solicitation or making of a subprime-~~or nontraditional~~  
35 loan that refinances all or any portion of the existing consumer  
36 loan or debt.

37 (j) (1) A licensed person shall not originate a subprime-~~or~~  
38 ~~nontraditional~~ loan unless the loan contract requires the creation  
39 of an escrow account and the collection of the monthly escrow of  
40 property taxes and hazard insurance calculated in accordance with

1 the requirements of Section 2609 of Title 12 of the United States  
2 Code and regulations promulgated pursuant thereto. The provisions  
3 of this paragraph do not apply to a subprime or nontraditional loan  
4 that is secured by a subordinate lien when the taxes and insurance  
5 are escrowed through another loan.

6 (2) An escrow or impound account established pursuant to  
7 paragraph (1) shall remain in existence for a minimum period of  
8 five years and until the borrower has sufficient equity in the  
9 dwelling securing the subprime or nontraditional loan so that  
10 private mortgage insurance is no longer required, unless the  
11 underlying mortgage establishing the account is terminated.

12 ~~(k) (1) A subprime or nontraditional loan shall not be made~~  
13 ~~unless the following disclosure, written in 12-point typeface or~~  
14 ~~larger, has been provided to the borrower no later than three~~  
15 ~~business days prior to signing of the loan documents of the~~  
16 ~~transaction:~~

#### 17 18 CONSUMER CAUTION NOTICE

19 ~~Because you are receiving this notice, it is likely that this~~  
20 ~~particular loan is a “subprime loan” that has a higher interest~~  
21 ~~rate than other mortgage loans and is intended for people with~~  
22 ~~less than excellent credit, or a “nontraditional loan,” such as~~  
23 ~~a no interest loan or a payment option ARM, that are both~~  
24 ~~subject to specific disclosure requirements and protections~~  
25 ~~under California law (Division 1.6 (commencing with Section~~  
26 ~~4970) of the Financial Code). Federal regulators have noted~~  
27 ~~the risky nature of the features of these loans.~~

28 ~~You are not required to complete any loan agreement merely~~  
29 ~~because you have received these disclosures or have signed a~~  
30 ~~loan application.~~

31 ~~If you proceed with this mortgage loan, you should also~~  
32 ~~remember that you may face serious financial risks if you use~~  
33 ~~this loan to pay off credit card debts and other debts in~~  
34 ~~connection with this transaction and then subsequently incur~~  
35 ~~significant new credit card charges or other debts. If you~~  
36 ~~continue to accumulate debt after this loan is closed and then~~  
37 ~~experience financial difficulties, you could lose your home~~  
38 ~~and any equity you have in it if you do not meet your mortgage~~  
39 ~~loan obligations.~~

1 You should consider consulting a qualified independent credit  
2 counselor or other experienced financial adviser regarding the  
3 rate, fees, and provisions of this mortgage loan before you  
4 proceed. For information on contacting a qualified credit  
5 counselor, ask your lender or call the United States Department  
6 of Housing and Urban Development's counseling hotline at  
7 \_\_\_\_\_ or go to \_\_\_\_\_ for a list of counselors.

8  
9 ~~(2) It shall be a rebuttable presumption that a licensed person~~  
10 ~~has met its obligation to provide the disclosure required by~~  
11 ~~paragraph (1) if the borrower provides the licensed person with a~~  
12 ~~signed acknowledgment of receipt of a copy of that disclosure.~~

13 ~~(t)~~

14 (k) It shall be a violation of this division for any person to avoid  
15 the application of this division by dividing any loan transaction  
16 into separate parts or otherwise structuring a loan transaction for  
17 the purpose of evading the provisions of this division or by  
18 engaging in any other subterfuge with the intent of evading any  
19 provision of this division.

20 ~~(m)~~

21 (l) A licensed person shall not make or cause to be made,  
22 directly or indirectly, any false, deceptive, or misleading statement,  
23 representation, or omission in connection with a subprime ~~or~~  
24 ~~nontraditional~~ loan.

25 ~~(n)~~

26 (m) A licensed person shall not finance, directly or indirectly,  
27 into a subprime ~~or nontraditional~~ loan, or finance to the same  
28 borrower within 30 days of consummation of the loan, any credit  
29 life, credit disability, credit property, or credit unemployment  
30 insurance premiums, or any debt cancellation or suspension  
31 agreement fees, provided that credit insurance premiums, debt  
32 cancellation, or suspension fees calculated and paid on a monthly  
33 basis shall not be considered financed by the person originating  
34 the loan. For purposes of this section, credit insurance does not  
35 include a contract issued by a government agency or private  
36 mortgage insurance company to insure the lender against loss  
37 caused by a mortgagor's default.

38 ~~(o)~~

39 (n) A subprime ~~or nontraditional~~ loan shall not contain a  
40 provision for negative amortization such that the payment schedule

1 for regular monthly payments causes the principal balance to  
2 increase.

3 ~~SEC. 5.~~

4 *SEC. 4.* Section 4974 of the Financial Code is amended to read:

5 4974. (a) Any compliance failure that was not willful or  
6 intentional and resulted from a bona fide error, that occurred  
7 notwithstanding the maintenance of procedures reasonably adopted  
8 to avoid those errors, including, but not limited to, those involving  
9 clerical, calculation, computer malfunction and programming, and  
10 printing errors shall be corrected no later than 45 days after receipt  
11 of the complaint or discovery of the error. A person who originates  
12 a ~~high-cost, subprime, or nontraditional~~ *covered or subprime* loan  
13 shall not be administratively, civilly, or criminally liable for a bona  
14 fide error corrected pursuant to this section.

15 (b) If a person who originates ~~high-cost, subprime, or~~  
16 ~~nontraditional~~ *covered or subprime* loans makes a loan where the  
17 person knew, or should have known, of and showed reckless  
18 disregard for a violation of this division by a broker, the person  
19 and broker shall be jointly and severally liable for all damages  
20 awarded under this division with respect to the broker's unlawful  
21 conduct.

22 This section does not impose or transfer liability for a breach of  
23 the broker's fiduciary duty.

24 ~~SEC. 6.~~

25 *SEC. 5.* Section 4975 of the Financial Code is amended to read:

26 4975. (a) (1) Any licensed person who violates any provision  
27 of Section 4973, 4973.2, 4979.6, or 4979.7 shall be deemed to  
28 have violated that person's licensing law.

29 (2) After a knowing and willful violation, the licensing agency  
30 may bring a proceeding to suspend the license of the licensed  
31 person for not less than six months and not more than three years.

32 (b) After a knowing and willful violation resulting in a second  
33 or subsequent administrative or civil action, the licensing agency  
34 may bring a proceeding to permanently revoke the license of the  
35 licensed person or impose any lesser licensed sanction for at least  
36 three years.

37 (c) A licensing agency may exercise any and all authority and  
38 powers available to it under any other provisions of law, to  
39 administer and enforce this division including, but not limited to,  
40 investigating and examining the licensed person's books and



1 records, and charging and collecting the reasonable costs for these  
2 activities. The licensing agency shall not charge a licensed person  
3 twice for the same service. Any civil, criminal, and administrative  
4 authority and remedies available to the licensing agency pursuant  
5 to its licensing law may be sought and employed in any  
6 combination deemed advisable by the licensing agency to enforce  
7 the provisions of this division.

8 (d) Nothing in this section shall be construed to impair or impede  
9 a licensing agency's authority under any other provision of law.

10 ~~SEC. 7.~~

11 *SEC. 6.* Section 4977 of the Financial Code is amended to read:

12 4977. (a) A licensing agency may, after appropriate notice and  
13 opportunity for hearing, by order levy administrative penalties  
14 against a person who violates any provision of this division, and  
15 the person shall be liable for administrative penalties of not more  
16 than ten thousand dollars (\$10,000) for each violation. Except for  
17 licensing agencies exempt from the provisions of the  
18 Administrative Procedure Act, any hearing shall be held in  
19 accordance with the Administrative Procedure Act (Chapter 5  
20 (commencing with Section 11500) of Part 1 of Division 3 of Title  
21 2 of the Government Code), and the licensing agency shall have  
22 all the powers granted under that act.

23 (b) Any person who willfully and knowingly violates any  
24 provision of this division shall be liable for a civil penalty of not  
25 more than twenty-five thousand dollars (\$25,000) for each violation  
26 which shall be assessed and recovered in a civil action brought in  
27 the name of the people of the State of California by the licensing  
28 agency, Attorney General, city attorney, or district attorney in any  
29 court of competent jurisdiction.

30 (c) Nothing in this section requires exhaustion of administrative  
31 remedies prior to an injured party bringing a civil action.

32 (d) If the licensing agency, Attorney General, city attorney, or  
33 district attorney determines that it is in the public interest, the  
34 licensing agency, Attorney General, city attorney, or district  
35 attorney may include, in any action for penalties authorized by  
36 subdivision (b), a claim for relief in addition to the penalties,  
37 including a claim for restitution or disgorgement, and the court  
38 shall have jurisdiction to award the additional relief.

39 (e) Nothing in this section shall be construed to impair or impede  
40 the Attorney General from representing a licensing agency in

1 bringing an action to enforce this division at the request and on  
2 behalf of the licensing agency.

3 (f) In any action brought by the licensing agency, Attorney  
4 General, city attorney, or district attorney under this division in  
5 which a judgment against a person is rendered, the licensing  
6 agency, Attorney General, city attorney, or district attorney shall  
7 be entitled to recover costs which, in the discretion of the court,  
8 may include an amount representing reasonable attorney's fees  
9 and investigative expenses for services rendered.

10 (g) The amounts collected under subdivisions (a) and (b) shall  
11 be deposited in the appropriate fund of the licensing agency to be  
12 used by that licensing agency, subject to appropriation by the  
13 Legislature, for the purposes of financial literacy education and  
14 enforcement in connection with abusive lending practices.

15 ~~SEC. 8.~~

16 *SEC. 7.* Section 4978 of the Financial Code is amended to read:

17 4978. (a) A person who fails to comply with the provisions  
18 of this division is civilly liable to the consumer in an amount equal  
19 to any actual damages suffered by the consumer, plus attorney's  
20 fees and costs. For a willful and knowing violation of this division,  
21 the person shall be liable to the consumer in the amount of  
22 twenty-five thousand dollars (\$25,000) or the consumer's actual  
23 damages, whichever is greater, plus attorney's fees and costs.

24 (b) (1) If a provision in a contract in a ~~high-cost~~ *covered* loan  
25 violates Section 4973, or a provision in a contract in a subprime  
26 ~~or nontraditional~~ loan violates Section 4973.2, or a provision in a  
27 contract of any of those loans violates Section 4979.6, or Section  
28 4979.7, that provision is unenforceable. A court in which any  
29 action is brought by, or on behalf of, an aggrieved consumer for  
30 relief may issue an order or injunction to reform the terms of the  
31 ~~high-cost, subprime, or nontraditional~~ *covered or subprime* loan  
32 to conform to the provisions of this division.

33 (2) A court may, in addition to any other remedy, award punitive  
34 damages to the consumer upon a finding that such damages are  
35 warranted pursuant to Section 3294 of the Civil Code.

36 (c) Nothing in this section is intended, nor shall be construed,  
37 to abrogate existing common law provisions prohibiting double  
38 recovery of damages.

39 (d) Without regard to whether a consumer is acting individually,  
40 jointly, or on behalf of others similarly situated, any provision in

1 a contract of a ~~high-cost, subprime, or nontraditional~~ *covered or*  
2 *subprime* loan that allows a party to require the consumer to assert  
3 any claim or defense in a forum that is less convenient, more costly,  
4 or more dilatory for the resolution of a dispute than a judicial forum  
5 established in this state where the consumer may otherwise  
6 properly bring a claim or defense or that limits in any way any  
7 claim or defense the consumer may have is unconscionable and  
8 void.

9 (e) Any provision in a contract of a ~~high-cost, subprime, or~~  
10 ~~nontraditional~~ *covered or subprime* loan that purports to waive the  
11 consumer's right to participate in a class action, or to pursue any  
12 claims in a class action or other consolidated or joint action, is  
13 unconscionable and void.

14 ~~SEC. 9:~~

15 *SEC. 8.* Section 4978.6 of the Financial Code is amended to  
16 read:

17 4978.6. A person who originates ~~high-cost, subprime, or~~  
18 ~~nontraditional~~ *covered or subprime* loans shall inform any  
19 employee, who originates those loans on behalf of the person, of  
20 the administrative or civil penalties for a violation of this division.

21 ~~SEC. 10:~~

22 *SEC. 9.* Section 4979 of the Financial Code is amended to read:

23 4979. Upon request, a person who originates a ~~high-cost,~~  
24 ~~subprime, or nontraditional~~ *covered or subprime* loan shall provide  
25 the licensing agency, Attorney General, city attorney, district  
26 attorney, or the consumer, at no cost, documentation regarding his  
27 or her loan that clearly demonstrates whether any loan is a  
28 ~~high-cost, subprime, or nontraditional~~ *covered or subprime* loan.  
29 This documentation shall include, but not be limited to, full  
30 disclosure of the original principal balance, the annual percentage  
31 rate, and the total points and fees, as defined in Section 4970.

32 ~~SEC. 11:~~

33 *SEC. 10.* Section 4980 is added to the Financial Code, to read:

34 4980. It shall constitute a defense against foreclosure on a  
35 property secured by a ~~high-cost, subprime, or nontraditional~~  
36 ~~covered or subprime~~ loan if that loan is in violation of this division.

37 ~~SEC. 12:~~

38 *SEC. 11.* The provisions of this act shall apply to ~~high-cost,~~  
39 ~~subprime, and nontraditional~~ *covered and subprime* loans  
40 originated on and after January 1, 2009.

1     ~~SEC. 13.~~

2     *SEC. 12.* The provisions of this act are severable. If any  
3 provision of this act or its application is held invalid, that invalidity  
4 shall not affect other provisions or applications that can be given  
5 effect without the invalid provision or application.

6     ~~SEC. 14.~~

7     *SEC. 13.* No reimbursement is required by this act pursuant to  
8 Section 6 of Article XIII B of the California Constitution because  
9 the only costs that may be incurred by a local agency or school  
10 district will be incurred because this act creates a new crime or  
11 infraction, eliminates a crime or infraction, or changes the penalty  
12 for a crime or infraction, within the meaning of Section 17556 of  
13 the Government Code, or changes the definition of a crime within  
14 the meaning of Section 6 of Article XIII B of the California  
15 Constitution.